

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

XUZHOU JINJIANG FOODSTUFFS
CO., LTD.,

Plaintiff,

No. C 09-3218 PJH

v.

**ORDER GRANTING MOTIONS
TO DISMISS**

MITTELSTAEDT, GALAVIZ & MYLIN
INC., et al.,

Defendants.

Defendants' motions to dismiss came on for hearing before this court on October 21, 2009. Plaintiff, Xuzhou Jinjiang Foodstuffs Co., Ltd. ("plaintiff"), appeared through its counsel, Robert Snyder. Defendants Abco Int'l Freight (USA) Inc. ("Abco"), and Mittelstaedt, Galaviz & Mylin Inc. ("Mittelstaedt") ("defendants") appeared through their respective counsel, Jolene Rice and Cameron Roberts. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby GRANTS defendants' motions to dismiss, for the reasons stated at the hearing, and summarized as follows:

1. Defendant Abco's motion to dismiss (in which Mittelstaedt joins), on the basis that plaintiff has failed to establish diversity grounds for subject matter jurisdiction, is GRANTED. See, e.g., Littlefield v. Continental Cas. Co., 475 F. Supp. 887, 889 (C.D. Cal. 1979)(plaintiff bears burden of proving and pleading complete diversity of citizenship). Leave to amend is also granted, however, so that plaintiff may attempt to cure these deficiencies.

2. Defendant Mittelstaedt's motion to dismiss, on grounds that plaintiff's

1 allegations are sufficiently deficient that they fail to state cognizable claims, is GRANTED
2 for the reasons stated in defendant's brief, and at the hearing.

3 3. In light of the arguments raised by defense counsel at the hearing, the parties
4 are furthermore instructed to meet and confer about a proposed amended complaint to be
5 filed by plaintiff. The parties must complete the meet and confer process, and plaintiff must
6 file a second amended complaint following the meet and confer process, no later than
7 November 6, 2009. In light of the foregoing, defendant need not respond to the first
8 amended complaint on file in this action.

9 4. Plaintiff's opposition brief to defendants' motions is STRICKEN, for the
10 reasons stated at the hearing.

11
12 **IT IS SO ORDERED.**

13 Dated: October 23, 2009



PHYLLIS J. HAMILTON
United States District Judge